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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/155,740	02/27/1998	DEBORAH ANN LEWIS	0885/0D930	9069

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05/01/2002

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EXAMINER

PRATT, HELEN F

ART UNIT

PAPER NUMBER

1761

20

DATE MAILED: 05/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/155,740

Applicant(s)

LEWIS ET AL.

Examiner

Helen F. Pratt

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-- **The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steinwand or Reznik in view of the prior art and GB 1004522 and GB 1228175 (from Applicants PCT) and Hsieh et al.

The claims are rejected for the reasons of record cited in the last office action.

ARGUMENTS

Applicant's arguments filed 2-28-02 have been fully considered but they are not persuasive. Applicants argue that the reference to Steinwand is used because the claims do not exclude the use of sodium hydroxide and that the process modifies the product internally and that this is the opposite of what is being claimed. However, this is not seen as nothing is said in the claims about treating the surface of the fruit. Nothing has been done to exclude this step from the claims.

Applicants argue that Dr. Reid in his Declaration says that treating a dried fruit is different than treating a fresh fruit, that one would not look to treating fresh fruit, in order to treat a dried fruit. This is not seen as fresh fruit and dried fruit are in the same field. One would look to the Steinwand patent because it teaches that the punctured skin would allow the sugars direct access to the interior of the fruit. This would have

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happened whether the fruit was treated with sodium hydroxide or not. The use of the sodium hydroxide was to prevent the grapes from cooking into a sauce (col. 1, lines 44-50).

Applicants argue that Steinwand does not maintain the integrity of the fruit. The claims do not say anything about the integrity of the fruit. In addition, it is not seen that the integrity of the fruit is not maintained, because Steinwand says that using the claimed treatment the fruit does not cook up into a sauce, but that the fruit is strengthened by the hydroxide treatment so that it can be punctured (col. 1, lines 44-55 and col. 2, lines 25-41).

Applicants argue that the Reznik patents aim is not to lower the water activity of the dried fruit, but to increase it and that the Reid Declaration says that the process is to enhance rehydration of the dried fruit. However, Applicants' process is to introducing solutes into a dried fruit, (line 1, claim 1), to infuse the fruit (step c) this is certainly, rehydration, and then drying the fruit to a desired moisture content and water activity. Apparently, the rehydrated state of the date is their chosen moisture content and water activity (col. 2, lines 34-50 Reznik).

Applicants argue that the Reznik patent uses a vacuum to draw water into the dates, and that is not needed to this invention. However, the claims do not exclude this limitation.

It is noted that the references to Steinwand and Reznik are used separately and not combined.

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Applicants argue as to the British patents that one would not look to them when treating dried fruits. This is not seen because Martin, 1,228, 175, teaches that the pulses are freeze-dried (i. e. a dried product) to remove 5 –60% moisture and then infused and can also be pricked or ruptured (col. 1, lines 25-46 and col. 1-66-90). The process of Martin et al. '175 is not limited to what applicants state and applicants' claims require providing a dried fruit. Martin '175 (col. 1, lines 25-38) discloses disrupting a freeze dried (i. e. dried vegetable) structure as in parts a and b of claim 1, (col. 2, page 1, lines 66-70), adding solutes Martin '175, lines 72-80(as in part c of claim 1) and drying the fruit (page 3, lines 80-85).

It is not seen that the references to Steinwand teach exactly the opposite processes, because they both infuse and also first puncture the vegetable or fruit.

Hsieh is used in combination discloses that dried fruit can be infused which since it is dried, must have cracks in the skin.

Applicants argue as to further combining Reznik with the other references. However, they each are used for what they teach as disclosed in the office actions. Applicants have not limited their claims to exclude other teaching of the references.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Helen F. Pratt at telephone number 703-308-1978.

Hp 4-27-02


HELEN PRATT
PRIMARY EXAMINER